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No. 14-280

In The

Supreme Court of the United States

HENRY MONTGOMERY,

Petitioner,

v.

STATE OF LOUISIANA,

Respondent.

On Writ Of Certiorari To The Supreme Court Of Louisiana

BRIEF OF THE EQUAL JUSTICE INITIATIVE ON BEHALF OF DOZENS SENTENCED TO DIE IN PRISON WHEN THEY WERE CHILDREN AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTERESTS OF *AMICI*[1]

The Equal Justice Initiative represents many people who have been sentenced to mandatory sentences of life without parole for crimes committed as children. These child offenders have never had a sentencing hearing where the sentencer was permitted to "tak[e] account of [the] offender's age and the wealth of characteristics and circumstances attendant to it." *Miller v. Alabama*, 132 S. Ct. 2455, 2467 (2012). Dozens of these condemned continue to be denied such a hearing today because they are imprisoned in States that have not applied *Miller* retroactively. These clients include:

- **Trina Garnett.** In 1976, Trina Garnett, a 14-year-old mentally disabled girl, was charged with second-degree murder after setting a fire that tragically killed two people in Chester, Pennsylvania. Trina was homeless and had suffered severe abuse, trauma, and mental illness. As a young child she was disfigured and scarred after being severely burned. She had an IQ in the borderline intellectual disabled range, suffered from speech

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[1] Pursuant to Rule 37.6, counsel for *amici curiae* state that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity other than *amici curiae* or their counsel has made a monetary contribution to the preparation or submission of this brief. The parties have consented to the filing of this brief, and letters reflecting their consent have been filed with the Clerk.

impediments and other learning disabilities, and lived a life marred by chaos, extreme abuse, and poverty.

Her mother died when she was just nine years old. She was left living on the streets, where she had to forage for food in garbage cans, was victimized by older teens and adults, and was denied medical attention for emotional and mental health problems in the period prior to her arrest. Reviewing courts found Trina's mental impairments meant she was incapable of forming an intent to kill, and there were serious doubts about whether she was competent to stand trial. Despite these findings, she was tried in adult court and convicted of second-degree murder during the course of an arson and burglary. Her trial judge had no choice but to impose a mandatory sentence of life imprisonment without parole, although he remarked that Trina's case was "one of the saddest I've ever seen" and expressed frustration that there was "no facility whatsoever to take care of these few juveniles in desperate need of a secure, safe and meaningful facility."

Trina was sent to an adult prison at age 15. Shortly after she arrived there, she was raped by a male prison guard and became pregnant. She gave birth to a son, who was immediately taken from her. For almost 40 years, Trina has been

denied treatment and care appropriate for someone with her disabilities because of her death-in-prison sentence. She is now physically disabled due to multiple sclerosis and uses a wheelchair.[2] Yet, because the Pennsylvania Supreme Court has ruled that *Miller* is not retroactive, she has been denied any opportunity to have these facts considered in determining whether she should die in prison. *See Commonwealth v. Cunningham*, 81 A.3d 1 (2013).

- **Quantel Lotts.** In 2000, Quantel Lotts was 14 years old when he and his 17-year-old stepbrother Michael got into a typical sibling fight while spending the night at a friends' house. Quantel's childhood up to that point had been controlled by parents who were, at best, drug-addicted and neglectful, and, at worst, explosively violent and abusive. His earliest memory was of seeing his uncle shot in front of the crack house where he lived with his mom in a violence-plagued area of north St. Louis County. After being removed from his mother's home for abuse and neglect and

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[2] *See also* Liliana Segura, *Throwaway People: Teens Sent to Die in Prison Will Get a Second Chance*, The Nation, May 9, 2012, http://www.thenation.com/article/throwaway-people-teens-sent-die-prison-will-get-second-chance/; The Lady Lifers, TEDxMuncyStatePrison, https://www.ted.com/talks/the_lady_lifers_a_moving_song_from_women_in_prison_for_life.

then spending time in the foster care system, he went to live with his father in rural St. Francois County, Missouri. Quantel's father, who was also struggling with drug addiction, taught him to solve conflicts with violence: when the children argued, he would put socks on their hands as boxing gloves and tell them to fight it out.

The parents of the friends who Quantel and Michael were staying with that day had weapons in the house, including hunting knives, which they allowed the children unsupervised access to, and this tragically permitted their argument to turn deadly. Quantel stabbed his stepbrother in this fight between siblings. Quantel was devastated when he realized Michael, with whom he had been very close, was dead.

Quantel was prosecuted for first-degree murder. Despite the plea of the victim's mother, Quantel's stepmother, at sentencing that "I just beg you not to give him [Quantel] life without parole, because I've already lost one son, and I don't want to lose another one," the court had no choice but to impose a mandatory sentence of life without parole. Since he has been incarcerated, Quantel has completed numerous programs, including an intensive 12-month institutional treatment program, which has helped him confront the trauma of his past and

learn new ways of thinking and approaching problems. Quantel's stepmother continues to support him and believes that he should be released.[3] However, although it has been nearly three years since Quantel filed a habeas petition in the Missouri Supreme Court requesting relief under *Miller*, the Missouri Supreme Court has so far failed to take any action on his case, or that of other similarly situated prisoners, in light of doubt about *Miller*'s retroactivity.

- **Damien Jenkins.** In 1992, Damien Jenkins was charged with capital murder in Alabama in connection with a drive-by shooting that occurred when he was 17 years old. Three other teenagers, Marcus Peterson, Willie Simmons, and Christopher Ruffin, were in the car with Damien. Willie Simmons was driving, and Marcus Peterson was the undisputed triggerman. However, only Damien received a sentence of life without parole, and he is the only one who remains in prison.

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[3] *See also* Ed Pilkington, *Jailed for life at age 14: US supreme court to consider juvenile sentences*, The Guardian, March 19, 2012, http://www.theguardian.com/law/2012/mar/19/supreme-court-juvenile-life-sentences; Adam Liptak & Lisa Faye Petak, *Juvenile Killers in Jail for Life Seek a Reprieve*, N.Y. Times, Apr. 20, 2011, http://www.nytimes.com/2011/04/21/us/21juvenile.html.

At a hearing on Damien's petition for relief under *Miller*, Carmen McCain, the mother of the victim Nazariah McCain, offered emotional and heartfelt testimony regarding her close relationship with Damien, how she considers Damien her own son now, and how she would like to see Damien released from prison because of his demonstrated maturity. Ms. McCain testified that "Damien and I talk all the time. Damien has matured so much. [ ] I would like to see him out. I would like to see him out." Ms. McCain stated that Damien is "very productive inside of the prison" and "doing things in there that I wish I could see our young men do out here." She testified that "Damien couldn't be more of my son. He couldn't be more of my son if I had him." Ms. McCain said, "I watched Damien go from a little airhead in there, just in the prison, like he didn't know what he was doing," but now says that "I have seen Damien blossom" to the point where the wardens, guards, and inmates all respect him very much. Ms. McCain then detailed some of her personal knowledge of Damien's efforts to help others in prison, including his work with a program to promote nonviolence, and his time spent volunteering in the

infirmary taking care of sick and elderly inmates.[4]

In addition, a psychiatrist employed by the Alabama Department of Corrections who observed Damien's work in the chaplaincy and the hospice division of the prison took the unusual step of voluntarily writing a letter to the sentencing court about Damien's work ethic, professionalism, accomplishments, and rehabilitation. He stated that Damien's "overall behavior indicates that he has incorporated longstanding positive changes in his life" and that Damien "deserve[s] a review for any opportunities that would facilitate his return back to society."

Given Ms. McCain's powerful testimony and the strong evidence of Damien's rehabilitation, the circuit court initially granted Damien a resentencing hearing under *Miller* where these facts could be considered in reducing his sentence, but the appellate courts reversed based on the ruling of the Alabama Supreme Court that *Miller* does not apply retroactively. *See Ex parte Williams*, No. 1131160, 2015 WL 1388138 (Ala. Mar. 27, 2015).

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[4] *See* Pet. Writ Cert., *Ex Parte Jenkins*, No. 1140426 (Ala. Feb. 13, 2015).

The dozens of children serving mandatory life without parole in States that have refused to apply *Miller* retroactively represented by the Equal Justice Initiative believe that *Miller* is retroactive and that this Court has jurisdiction to review the refusal of State courts to apply it to their cases without further delay.

SUMMARY OF ARGUMENT

This Court's determination in *Miller v. Alabama*, 132 S. Ct. 2455 (2012), that it is cruel and unusual to impose a mandatory life-without-parole sentence on a child under the age of 18 must be applied retroactively to all cases where that punishment has been imposed. *Miller* categorically prohibited an automatic life-without-parole sentence for an entire class of criminal defendants: those who were "under the age of 18 at the time of their crimes." *Id.* at 2460. As such, it is a substantive rule. *Miller* is no different than the Eighth Amendment precedents on which it relied, which have universally been applied retroactively because the determination that a punishment is cruel and unusual is inexorably a substantive one.

This Court can and should find that *Miller* is retroactive in this case because this Court unquestionably has jurisdiction here. The Louisiana Supreme Court explicitly relied only on federal law in reaching its determination that *Miller* is not retroactive and that is sufficient for this Court's review. But

even if Louisiana had purported to rely on state law, state courts cannot, consistent with basic norms of constitutional adjudication, refuse to provide a remedy for constitutional violations that fall within *Teague*'s exceptions.

ARGUMENT

I. *MILLER V. ALABAMA* APPLIES RETROACTIVELY TO CASES ON COLLATERAL REVIEW.

This Court held in *Miller v. Alabama*, 132 S. Ct. 2455 (2012), "that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." *Id.* at 2469. The Constitution requires that before such a harsh, permanent sanction can be imposed on a child, the sentencer must "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.* Based on this holding, many States have ordered resentencing hearings for individuals who had previously been sentenced to mandatory life without parole as children. But Louisiana, relying on this Court's decision in *Teague v. Lane*, 489 U.S. 288 (1989) (plurality opinion), has refused to apply *Miller* retroactively to prisoners, like Mr. Montgomery and *amici*, whose convictions became final before *Miller* was decided. A proper reading of *Teague* and its progeny requires that *Miller* be applied to all cases on collateral review.

A. *Miller* Announced a New Substantive Rule.

For purposes of retroactivity, this Court has drawn a distinction between substantive and procedural rules. "New *substantive* rules generally apply retroactively." *Schriro v. Summerlin*, 542 U.S. 348, 351 (2004); *see also Mackey v. United States*, 401 U.S. 667, 692 (1971) (Harlan, J., concurring in part and dissenting in part) (noting that "[n]ew 'substantive due process' rules . must, in my view, be placed on a different footing" than procedural rules subject to the general principle of non-retroactivity).

This Court's precedents have established that substantive rules:

> include[ ] decisions that narrow the scope of a criminal statute by interpreting its terms, *see Bousley v. United States*, 523 U.S. 614, 620-621 [ ] (1998), as well as constitutional determinations that place particular conduct or persons covered by the statute beyond the State's power to punish, *see Saffle v. Parks*, 494 U.S. 484, 494-495 [ ] (1990); *Teague v. Lane*, 489 U.S. 288, 311 [ ] (1989) (plurality opinion).

Summerlin, 542 U.S. at 351-52. This precept applies to rules that "deprive[ ] the State of the power to impose a certain penalty" as well as those that deprive the State of the "power to punish at all." *Penry v. Lynaugh*, 492 U.S. 302, 330 (1989), *abrogated on other grounds by Atkins v. Virginia*, 536 U.S. 304 (2002).

Most fundamentally, however, each description of substantive rules in this Court's cases indicates that substantive rules are those that reshape permissible outcomes. By contrast, procedural rules merely alter the method of choosing among preexisting outcomes. As such, substantive "rules apply retroactively because they 'necessarily carry a significant risk that a defendant stands convicted of "an act that the law does not make criminal"' or faces a punishment that the law cannot impose upon him." *Summerlin*, 542 U.S. at 352 (quoting *Bousley*, 523 U.S. at 620, quoting in turn *Davis v. United States*, 417 U.S. 333, 346 (1974)). Thus, as this Court has recognized, rules that change the facts defining "the range of conduct [that can be] subjected to [a particular] penalty" are substantive because they reshape the permissible boundaries of the culpability determination. *Summerlin*, 542 U.S. at 353. Where the penalty has been applied without determining "the essential facts" that mark the constitutional boundary line and bring the defendant's case within the range of permissible punishment, there necessarily exists the significant risk that the punishment he suffers is one which the Constitution forbids. *Id.* at 352-53.

Miller's rule is demonstrably substantive within this framework. By depriving the State of the power to mandate a sentence of life without parole, *Miller* placed a substantive limitation on the State's power to punish a class of offenders, children. In so doing, it invalidated sentencing statutes (like Alabama's, Arkansas's, and Louisiana's) that had previously

provided for only a single punishment, and instead required the possibility of a new, lesser outcome. As a result, these States were required to alter the underlying penalties in these cases to make new sentencing options available. *Cf. Alleyne v. United States*, 133 S. Ct. 2151, 2160 (2013) (recognizing that because "the legally prescribed range *is* the penalty affixed to the crime," a change to the floor of that range changes the penalty).

As many of these States have concluded, these are quintessentially substantive legal changes. *See People v. Davis*, 6 N.E.3d 709, 722 (Ill. 2014) ("*Miller* mandates a sentencing range broader than that provided by statute for minors convicted of first degree murder who could otherwise receive only natural life imprisonment." (citation omitted)), *cert. denied*, 135 S. Ct. 710 (2014); *Jones v. State*, 122 So. 3d 698, 702 (Miss. 2013) ("*Miller* modified our substantive law by narrowing its application for juveniles."), *reh'g denied* (Sept. 26, 2013); *State v. Mantich*, 842 N.W.2d 716, 731 (Neb. 2014) ("[T]he fact that *Miller* required Nebraska to change its substantive punishment for the crime of first degree murder when committed by a juvenile demonstrates the rule announced in *Miller* is a substantive change in the law."), *cert. denied*, 135 S. Ct. 67 (2014); *Petition of State*, 103 A.3d 227, 234 (N.H. 2014) ("*Miller* changed the permissible punishment for juveniles convicted of homicide."); *Ex parte Maxwell*, 424 S.W.3d 66, 75 (Tex. Crim. App. 2014) ("After *Miller*, there is a range of new outcomes – discretionary

sentences that can extend up to life without the possibility of parole but also include the more lenient alternatives." (citation omitted)); *State v. Mares*, 335 P.3d 487, 507 (Wyo. 2014) ("[T]he *Miller* holding has effected a substantive change in the sentencing statutes applicable to juvenile offenders.").[5]

Moreover, *Miller* narrowed the class of offenders who can be subjected to a sentence of life without parole. Before *Miller*, every juvenile convicted of homicide could be automatically sentenced to life without parole. But *Miller* recognized that, even in the context of aggravated homicide cases, "the characteristics of youth, and the way they weaken rationales for punishment, can render a life-without-parole sentence disproportionate." 132 S. Ct. at 2465-66. For this reason, "appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon." *Id.* at 2469. Thus, after *Miller*, the State's power to sentence children to life without parole has been narrowed from every case to only the uncommon case. As a result, there is what *Summerlin* called "a significant risk" that juveniles who have previously been sentenced to life without parole are currently serving a sentence "that the law cannot impose." 542 U.S. at 352 (citation omitted); *see also*

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[5] For this reason, the Department of Justice has conceded that *Miller* is substantive in federal cases. *See, e.g.*, Gov't's Resp. to Pet'r's App. for Authorization to File a Second or Successive Mot. Under 28 U.S.C. § 2255 at 10-17, *Johnson v. United States*, 720 F.3d 720 (8th Cir. 2013) (No. 12-3744).

Aiken v. Byars, 765 S.E.2d 572, 576 (S.C. 2014) ("Failing to apply the *Miller* rule retroactively risks subjecting defendants to a legally invalid punishment."), *cert. denied*, 135 S. Ct. 2379; *Songster v. Beard*, 35 F. Supp. 3d 657, 663 (E.D. Pa. 2014).

Miller also altered the essential facts necessary to impose life without parole on a child. *Miller* held that such a sentence can only be imposed after the sentencer has "take[n] into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." 132 S. Ct. at 2469. Thus, as the Nebraska Supreme Court recognized, this "Court made a certain fact (consideration of mitigating evidence) essential to imposition of a sentence of life imprisonment without parole." *Mantich*, 842 N.W.2d at 730. This is a substantive rule.

In holding that *Miller* is not retroactive, the Louisiana Supreme Court said that *Miller* "did not alter the range of persons subject to life imprisonment without parole for homicide offenses," but "simply altered the range of *permissible methods* for determining whether a juvenile could be sentenced to life imprisonment without parole." *State v. Tate*, 130 So. 3d 829, 837 (La. 2013). But that is wrong. When a sentencing scheme is mandatory, by definition, there is no "method" for making that determination. *Miller* did not alter an existing method, but rather altered *who* is eligible to receive this harsh sentence.

Indeed, *Miller* is easily distinguishable from procedural "rules that regulate *only* the *manner of determining* the defendant's culpability," but do not alter the scope of the culpability determination itself. *Summerlin*, 542 U.S. at 353 (first emphasis added). In *Summerlin*, this Court found that the rule of *Ring v. Arizona*, 536 U.S. 584 (2002), that a jury rather than a judge must find the aggravating factors necessary to impose the death penalty, was procedural. The Court reached that conclusion because *Ring* merely "allocate[d] decisionmaking authority" without altering state law as to what facts the decisionmaker had to find. *Summerlin*, 542 U.S. at 353-54. Unlike *Ring*, "*Miller* require[s] a sentencer of a juvenile to consider new facts, i.e., mitigation evidence, before imposing a life imprisonment sentence with no possibility of parole." *Mantich*, 842 N.W.2d at 730. Hence, the rule in *Miller* is substantive because "it impose[s] a new requirement as to what a sentencer must consider in order to constitutionally impose life imprisonment without parole on a juvenile." *Id.*; *see also Maxwell*, 424 S.W.3d at 75 ("*Miller* is distinguishable from *Ring* because it does not simply reallocate decision making authority from judge to jury; instead, it provides a sentencing court with decision making authority where there once was none. " (citation omitted)).

Finally, the mandatory nature of the sentences at issue in *Miller* is more accurately characterized as an aspect of the punishment, rather than a procedural mechanism. It is well recognized that legislatures adopt mandatory penalties to "convey the message

that certain crimes are deemed especially grave and that people who commit them deserve, and may expect, harsh sanctions" – in other words, to promote retribution, deterrence, and incapacitation, which are typical purposes of punishment. *See* National Institute of Justice, U.S. Dep't of Justice, *Key Legislative Issues in Criminal Justice: Mandatory Sentencing*, at 2 (1997); *see also Sumner v. Shuman*, 483 U.S. 66, 82-85 (1987) (discussing deterrence and retribution rationales for mandatory death sentences and finding them inadequate to justify that punishment). Mandatory sentencing schemes are not adopted to improve the fairness and accuracy of the sentencing proceeding – the typical purpose of procedural rules. In this sense, a mandatory sentence of life without parole is best understood as a particular type of punishment.

This Court in *Penry* said that substantive rules include rules that restrict punishment "for a class of defendants because of their status or offense." 492 U.S. at 330. *Miller* prohibits mandatory life without parole for a class of defendants (those under the age of 18 at the time of the offense) because of their status (as children). *See, e.g.*, *State v. Ragland*, 836 N.W.2d 107, 115 (Iowa 2013); *Diatchenko v. Dist. Attorney for Suffolk Dist.*, 1 N.E.3d 270, 281 (Mass. 2013).

And there is added reason for applying *Penry* in the present setting. *Miller* is the rare case in which nonretroactivity would wholly subvert the core principle of the constitutional right in question. The substantive heart of *Miller*'s reasoning is that "[l]ife

without parole 'forswears altogether the rehabilitative ideal' [and] reflects 'an irrevocable judgment about [an offender's] value and place in society,' at odds with a child's capacity for change." 132 S. Ct. at 2465 (quoting *Graham v. Florida*, 560 U.S. 48, 74 (2010)). "A life without parole sentence improperly denies the juvenile offender a chance to demonstrate growth and maturity." *Graham*, 560 U.S. at 73.[6] The fundamental premise of rehabilitation and of the chance to grow is youth's potential for future change. Rehabilitation constitutes a bridge of promise between the past crimes of an immature human creature and the possibility that with maturity the individual will earn "the right to reenter the community," *id.* at 74. As such, it necessarily views the past within a framework of hope that looks ahead to the long-range future.

This Court's decisions in *Graham* and *Miller* did not give Terrance Graham or Evan Miller any present relief from incarceration. To the contrary, those decisions contemplated that both boys – and their cohorts – would spend substantial periods of time in prison before the rights recognized by the Court would accrue to their benefit. The essence of those rights was a guarantee that the end of their lives –

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[6] "'A State is not required to guarantee [young offenders] eventual freedom,' but must provide 'some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.'" *Miller*, 132 S. Ct. at 2469 (quoting *Graham*, 560 U.S. at 75).

not the immediate present but a determinate period of future time – might be lived with dignity if they earned it through "the gradual renewal of a man, his gradual regeneration, his passing from one world into another, his initiation into a new unknown life."[7] The prohibition against subjecting them to the premature "judgment that [a] . juvenile is incorrigible"[8] is in essence a guarantee of *future* consideration for redemption after the expiration of *past* serious crimes. Juveniles who were sentenced to life without parole before *Graham* or before *Miller* are no differently situated than Graham and Miller themselves from this standpoint. The violation of human dignity to which they will be subjected by future lifelong incarceration without ever receiving a chance to be considered for release is temporally as well as logically indistinguishable from Graham's and Miller's.

B. *Miller* Is the Same Type of Rule as the Retroactive Eighth Amendment Precedents from Which It Descended.

That *Miller* is retroactive is further made plain by its pedigree – it is the same type of rule as the retroactive decisions from which it is descended. *See Tyler v. Cain*, 533 U.S. 656, 668-69 (2001) (O'Connor,

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[7] Fyodor Dostoyevsky, *Crime and Punishment* 532 (Constance Garnett trans., Modern Library paperback ed. 1950).

[8] *Graham*, 560 U.S. at 72.

J., concurring) (explaining that "if we hold in Case One that a particular type of rule applies retroactively to cases on collateral review and hold in Case Two that a given rule is of that particular type, then it necessarily follows that the given rule applies retroactively to cases on collateral review"). Indeed, this Court has never barred a punishment as cruel and unusual under the Eighth Amendment but refused to apply that decision retroactively.

As this Court explained in *Miller* at pages 2463-68, the ban on mandatory life-without-parole sentences for children flows from two strands of Eighth Amendment precedent. The first set of cases "establish that children are constitutionally different from adults for purposes of sentencing." *Id.* at 2464. *Roper v. Simmons*, 543 U.S. 551 (2005), banned death sentences for children, and *Graham v. Florida*, 560 U.S. 48 (2010), banned life-without-parole sentences for children convicted of nonhomicide crimes. Both *Roper* and *Graham* have universally been applied retroactively.[9]

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[9] *See, e.g.*, *Horn v. Quarterman*, 508 F.3d 306, 307-08 (5th Cir. 2007) (noting retroactive application of *Roper*); *LeCroy v. Sec'y, Fla. Dep't of Corr.*, 421 F.3d 1237, 1239-40 (11th Cir. 2005) (same); and *In re Moss*, 703 F.3d 1301, 1302-03 (11th Cir. 2013) (holding *Graham* applies retroactively to cases on collateral review); *In re Sparks*, 657 F.3d 258, 262 (5th Cir. 2011) (holding *Graham* was made retroactive on collateral review). In its opposition to the grant of certiorari in this case, the State of Louisiana conceded that *Graham* is retroactive. Resp't's Br. Opp. at 29-30.

The second line of cases "demand[] individualized sentencing when imposing the death penalty." *Miller*, 132 S. Ct. at 2467. In *Woodson v. North Carolina*, 428 U.S. 280 (1976) (plurality opinion), this Court banned mandatory death sentences in most circumstances, and, in *Lockett v. Ohio*, 438 U.S. 586 (1978), this Court held that the sentencer must be permitted to consider mitigating circumstances before imposing the death penalty. These decisions have also been universally considered to apply retroactively.[10]

In this second strand of cases, this Court also cited *Sumner v. Shuman*, 483 U.S. 66 (1987). *Miller*, 132 S. Ct. at 2467. In *Shuman*, this Court answered a question explicitly left open in *Woodson* and held that a mandatory death sentence could not constitutionally be imposed on someone who commits murder while serving a life sentence. *Shuman*, 483 U.S. at 77-78. *Shuman* came before this Court on review of a federal habeas petition, *id.* at 68-69, and, in granting relief, this Court applied the holding in *Shuman* retroactively.[11]

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[10] *See, e.g.*, *Dutton v. Brown*, 812 F.2d 593, 599 n.7 (10th Cir. 1987) (noting that law "require[s] the retroactive application of *Lockett*"); *Songer v. Wainwright*, 769 F.2d 1488, 1489 (11th Cir. 1985) ("There is no doubt today about this question. *Lockett* is retroactive."); *Riley v. Wainwright*, 517 So. 2d 656, 657 (Fla. 1987) ("*Lockett* clearly is retroactive.").

[11] Other courts followed suit. *See, e.g.*, *Campbell v. Blodgett*, 978 F.2d 1502, 1512-13 (9th Cir. 1992) (per curiam) (determining merits of *Shuman* claim in case that became final two years before *Shuman* decided); *Thigpen v. Thigpen*, 926 F.2d 1003,

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Woodson, *Lockett*, and *Shuman* are particularly apt parallels to *Miller*. This Court has previously described *Lockett* and its progeny not as procedural rules, but as rules that "place clear limits on the ability of the State to define the factual bases upon which the capital sentencing decision must be made." *Saffle v. Parks*, 494 U.S. 484, 490 (1990). Thus, these cases impose substantive limitations on the State's power to punish. *Miller* is no different.[12] The Iowa Supreme Court put it plainly: because "a substantial portion of the authority used in *Miller* has been applied retroactively, *Miller* should logically receive the same treatment." *State v. Ragland*, 836 N.W.2d 107, 116 (Iowa 2013).[13]

The consistent treatment of rules declaring a punishment cruel and unusual makes sense in light of the purpose of the constitutional prohibition at stake. By its very nature, a ruling that a particular punishment is "cruel and unusual" and consequently barred by the Eighth Amendment necessarily constitutes a substantive judgment about evolving standards of decency and the unacceptability of such a

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1005 (11th Cir. 1991) (noting death sentence set aside on *Shuman* grounds in federal habeas corpus case).

[12] This Court recognized the strength of this argument by authorizing relief to Kuntrell Jackson whose case was not on direct appeal when this Court ordered relief. *Miller*, 132 S. Ct. at 2461, 2475.

[13] Although *Woodson*, *Lockett*, and *Shuman* were decided before *Teague*, substantive rules have been consistently applied retroactively both before and after *Teague*.

punishment. Because this Court's invalidation of mandatory life without parole was rooted in well-established Eighth Amendment principles that are entirely substantive in character, *Miller* must be applied retroactively. It would be violative of the Eighth Amendment to tolerate cruel punishments in some contexts but not others where remedies can be implemented.

II. THE LOUISIANA SUPREME COURT'S REFUSAL TO APPLY *MILLER* TO THIS CASE PRESENTS A FEDERAL QUESTION.

A. The Louisiana Supreme Court Expressly Relied on Federal Law to Deny Relief.

The Louisiana Supreme Court's summary decision in this case relied entirely on its prior decision in *State v. Tate*, 130 So. 3d 829 (La. 2013). *State v. Montgomery*, 141 So. 3d 264 (La. 2014). In finding that *Miller* should not be applied retroactively, *Tate* cited to only a single Louisiana Supreme Court decision – and that decision was cited for the proposition that "the standards for determining retroactivity set forth in *Teague v. Lane*, 489 U.S. 288 [ ] (1989), apply 'to all cases on collateral review in our state courts.' Accordingly, our analysis is directed by the *Teague* inquiry." 130 So. 3d at 834 (quoting *State ex rel. Taylor v. Whitley*, 606 So. 2d 1292, 1297 (La.

1992)).[14] The Louisiana Supreme Court then proceeded to "[a]pply[ ] the *Teague* analysis [t]herein," quoting at length from this Court's retroactivity decisions and citing to, and relying on, 17 different retroactivity decisions from this Court. *Id.* at 834-41 & n.3. The Louisiana Supreme Court concluded that "under the *Teague* analysis," *Miller* is not retroactive. *Id.* at 844. Because the Louisiana Supreme Court relied explicitly and exclusively on federal law to deny relief, that denial creates a federal question subject to review by this Court.[15]

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[14] The assertion in the Brief of the Court-Appointed Amicus Curiae Arguing Against Jurisdiction [hereinafter Anti-Jurisdiction Amicus] at 13 that the "Louisiana Supreme Court has held expressly that it is not bound by federal law" vastly overstates that court's decision in *Taylor*. In fact, the *holding* of *Taylor* was precisely that *Teague* would be considered binding law in Louisiana courts. *Taylor*, 606 So. 2d at 1296 (holding that it would "adopt the *Teague* standards for all cases on collateral review in our state courts"). While the court noted in passing that "we are not bound to adopt the *Teague* standards," it appears that the court was merely referring to its ability to adopt a *broader* standard for retroactivity than *Teague*. *Id.* at 1296 & n.2. It cited to only one state court that had declined to adopt *Teague*, which had done so because it found the *Teague* standard to be "unduly narrow." *Cowell v. Leapley*, 458 N.W.2d 514, 518 (S.D. 1990), *overruled by Siers v. Weber*, 851 N.W.2d 731, 742 (S.D. 2014). The Louisiana Supreme Court was therefore likely saying nothing more than what this Court later held in *Danforth v. Minnesota*, 552 U.S. 264 (2008).

[15] A State's decision to adopt *Teague* is not, as the Anti-Jurisdiction Amicus Brief argues at 15-16, comparable to adopting rules of evidence that parallel the federal rules. *Teague* was based on a careful balancing of federal and state interests in

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In *Michigan v. Long*, 463 U.S. 1032 (1983), this Court reviewed a decision from the Michigan Supreme Court that found a police officer's search of a passenger compartment violated *Terry v. Ohio*, 392 U.S. 1 (1968). Mr. Long argued before this Court that the Michigan Supreme Court's decision was based on adequate and independent state grounds because it twice cited the state constitution in reaching its decision; accordingly, he contended this Court was without jurisdiction to review the Michigan Supreme Court's determination of a constitutional violation. *Id.* at 1037-38. In rejecting Mr. Long's argument, this Court recognized that "there is an important need for uniformity in federal law, and that this need goes unsatisfied when we fail to review an opinion that rests primarily upon federal grounds and where the *independence* of an alleged state ground is not apparent from the four corners of the opinion." *Id.* at 1040.

This Court continued:

> [W]hen, as in this case, a state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law, and when the adequacy and independence of

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the enforcement of constitutional rights and the finality of state convictions. 489 U.S. at 308-10. By holding that it will provide a state postconviction remedy for all new rules that fall under *Teague*'s exceptions, a State expresses its interest in correcting constitutional errors in its state convictions itself, rather than having the federal habeas courts do so. A federal habeas court will never correct a State's interpretation of its own rules of evidence, even if they are analogous to the federal rules.

> any possible state law ground is not clear from the face of the opinion, we will accept as the most reasonable explanation that the state court decided the case the way it did because it believed that federal law required it to do so. If a state court chooses merely to rely on federal precedents as it would on the precedents of all other jurisdictions, then it need only make clear by a plain statement in its judgment or opinion that the federal cases are being used only for the purpose of guidance, and do not themselves compel the result that the court has reached. In this way, both justice and judicial administration will be greatly improved.

Id. at 1040-41. This Court found that "[i]f the state court decision indicates clearly and expressly that it is alternatively based on bona fide separate, adequate, and independent grounds, we, of course, will not undertake to review the decision." *Id.* at 1041. This Court then applied this framework to the Michigan Supreme Court's decision, and observed that even though the decision cited the state constitution twice, "[n]ot a single state case was cited to support the state court's holding." *Id.* at 1043. As a result, this Court concluded that "the Michigan Supreme Court rested its decision primarily on federal law" and "that the state court 'felt compelled by what it understood to be federal constitutional considerations to construe its own law in the manner it did.'" *Id.* at 1044

(quoting *Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U.S. 562, 568 (1977)).[16]

Here, the only Louisiana Supreme Court case that was cited in the retroactivity section of *Tate* was one that stood for the proposition that the question of

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[16] *See also, e.g., Kansas v. Marsh*, 548 U.S. 163, 169 (2006):

> Nor is the Kansas Supreme Court's decision supported by adequate and independent state grounds. Marsh maintains that the Kansas Supreme Court's decision was based on the severability of § 21-4624(e) under state law, and not the constitutionality of that provision under federal law, the latter issue having been resolved by the Kansas Supreme Court in *State v. Kleypas*, 272 Kan. 894, 40 P.3d 139 (2001) (per curiam). Marsh's argument fails.
>
> *Kleypas*, itself, rested on federal law. *See id.*, at 899-903, 40 P.3d, at 166-167. In rendering its determination here, the Kansas Supreme Court observed that *Kleypas*, "held that the weighing equation in K.S.A. 21-4624(e) as written was unconstitutional under the Eighth and Fourteenth Amendments" as applied to cases in which aggravating evidence and mitigating evidence are equally balanced. 278 Kan., at 534, 102 P.3d, at 457. In this case, the Kansas Supreme Court chastised the *Kleypas* court for avoiding the constitutional issue of the statute's facial validity, squarely held that § 21-4624(e) is unconstitutional on its face, and overruled the portion of *Kleypas* upholding the statute through the constitutional avoidance doctrine and judicial revision. 278 Kan., at 534-535, 539-542, 102 P.3d, at 458, 462. As in *Kleypas*, the Kansas Supreme Court clearly rested its decision here on the Eighth and Fourteenth Amendments to the United States Constitution. We, therefore, have jurisdiction to review its decision.

retroactivity in Louisiana is controlled entirely by federal law. *Tate*, 130 So. 3d at 834 (quoting *Taylor*, 606 So. 2d at 1297). The Louisiana Supreme Court in *Tate* certainly never "indicate[d] clearly and expressly that [its decision] is alternatively based on bona fide separate, adequate, and independent grounds." *Long*, 463 U.S. at 1041. Rather, the Louisiana Supreme Court repeatedly made clear that it was relying on federal law. *See, e.g.*, *Tate*, 130 So. 3d at 834 ("[O]ur analysis is directed by the *Teague* inquiry."); *id.* at 835 ("Applying the *Teague* analysis herein, we must first determine when Tate's conviction became final."); *id.* at 836 ("The Supreme Court has, however, sought to clarify the difference between substantive and procedural rules."); *id.* at 839 & n.3 (discussing this Court's analysis of watershed procedural rules); *id.* at 840 (noting that "the Supreme Court has repeatedly explained" what is required for a rule to qualify as a watershed procedural rule). Without question, the Louisiana Supreme Court's decision in *Tate* (and, therefore, in *Montgomery*) "rest[ed] primarily on federal law." *Long*, 463 U.S. at 1040; *see also Florida v. Powell*, 559 U.S. 50, 57 (2010) (holding that this Court had jurisdiction despite Florida Supreme Court's citations to Florida Constitution and other Florida caselaw); *Caldwell v. Mississippi*, 472 U.S. 320, 327 (1985) (holding that general discussion of state procedural bar in lower court's opinion was not "express indication" of adequate and independent state grounds as required by *Long*). The opinion in *Tate* makes clear that the Louisiana Supreme Court "felt compelled" to reach its decision based on its

understanding of federal law and not on independent state law. *Long*, 463 U.S. at 1044 (quoting *Zacchini*, 433 U.S. at 568).[17]

In *Danforth v. Minnesota*, 552 U.S. 264 (2008), when addressing whether state courts may apply a decision more broadly than required by *Teague*, this Court found that there was "solid support for th[e] proposition" that even though a State "may grant its citizens broader protection than the Federal Constitution requires by enacting appropriate legislation or by judicial interpretation of its own Constitution, it may not do so by judicial misconstruction of federal law." *Id.* at 288 (citing *Oregon v. Hass*, 420 U.S. 714 (1975), *Tarble's Case*, 80 U.S. 397 (1871), and *Ableman v. Booth*, 62 U.S. 506 (1858)). However, this Court noted that "the States that give broader retroactive effect to this Court's new rules of criminal procedure do not do so by misconstruing the federal *Teague* standard. Rather, they have developed *state*

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[17] The Anti-Jurisdiction Amicus Brief argues at 18-19 that this Court should not apply the *Long* presumption because, if the Louisiana Supreme Court later adopts a narrower state standard, then this Court's opinion would be merely advisory. This should be less of a concern than other cases where this Court applies *Long* because the Louisiana Supreme Court has longstanding precedent that it will follow *Teague* and the availability of federal habeas relief gives it some incentive to continue to do so. But regardless, this Court's opinion would not be advisory in the traditional sense because it would still determine the ultimate outcome of the dispute between the parties – whether Mr. Montgomery is entitled to a new sentencing hearing – either in state or federal court.

law to govern retroactivity in state postconviction proceedings." *Id.* at 289. Assuming arguendo the inverse of this proposition were true – that state courts could develop state retroactivity law that provides less relief than *Teague* – the Louisiana Supreme Court has no independent state law governing retroactivity. Instead, it denied relief "by misconstruing the federal *Teague* standard." *Id.*; *see also Harper v. Virginia Dep't of Taxation*, 509 U.S. 86, 100 (1993) ("Whatever freedom state courts may enjoy to limit the retroactive operation of their own interpretations of state law, cannot extend to their interpretations of federal law." (internal citations omitted)). This Court has jurisdiction to correct this error.[18]

In *American Trucking Ass'ns, Inc. v. Smith*, 496 U.S. 167 (1990), this Court addressed a very similar question. The Arkansas Supreme Court, in determining whether Arkansas citizens would receive refunds under *American Trucking Ass'ns, Inc. v. Scheiner*, 483 U.S. 266 (1987), "took the view that, whatever else Arkansas law might require, petitioners could not

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[18] Indeed, this Court has repeatedly recognized that "this Court retains a role when a state court's interpretation of state law has been influenced by an accompanying interpretation of federal law." *Ohio v. Reiner*, 532 U.S. 17, 20 (2001) (quoting *Three Affiliated Tribes of Fort Berthold Reservation v. Wold Engineering*, 467 U.S. 138, 152 (1984)); *see also Fitzgerald v. Racing Ass'n of Cent. Iowa*, 539 U.S. 103, 106 (2003) (finding state court's holding that "Iowa courts are to 'apply the same analysis in considering the state equal protection claims as . . . in considering the federal equal protection claim'" created jurisdiction in this Court to review that analysis).

receive tax refunds if *Scheiner* is not retroactive under the [federal retroactivity] test of *Chevron Oil* [*Co. v. Huson*, 404 U.S. 97 (1971)]" and, further, determined that under *Chevron*, *Scheiner* should not be applied retroactively. *Smith*, 496 U.S. at 177-78. A plurality of this Court held that it was "eminently clear that the 'state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law.'" *Id.* at 177 (quoting *Long*, 463 U.S. at 1040). The plurality emphasized that "the Arkansas Supreme Court decided that under *Chevron Oil* our decision in *Scheiner* need only apply prospectively. This decision presents a federal question: Did the Arkansas Supreme Court apply *Chevron Oil* correctly?" *Id.* at 178.

As in *Smith*, the Louisiana Supreme Court decided in *Tate* that the new constitutional rule of *Miller* could not be applied retroactively under *federal* retroactivity standards. *See Tate*, 130 So. 3d at 844 (holding that "under the *Teague* analysis," *Miller* is not retroactive). "This decision presents a federal question: Did the [Louisiana] Supreme Court apply [*Teague*] correctly?" *Smith*, 496 U.S. at 178. As a result, this Court has jurisdiction to review the Louisiana Supreme Court's determination that *Miller* is not retroactive under *Teague*.

B. The Minimum Level of Retroactivity That State Postconviction Courts Must Provide Is a Question of Federal Law.

Even if the Louisiana Supreme Court had purported to rely exclusively on state law to deny relief, there would be a federal question. This Court recognized in *Danforth v. Minnesota*, 552 U.S. 264 (2008), that the retroactive applicability of this Court's constitutional decisions in state courts is "a mixed question of state and federal law." *Id.* at 291 (quoting *American Trucking Ass'ns, Inc. v. Smith*, 496 U.S. 167, 205 (1990) (Stevens, J., dissenting)). This is so because, while state law may set the ceiling for retroactive application, federal law sets the floor. A State "is free to choose which form of relief it will provide," including providing broader retroactivity than required by federal law, but only "so long as that relief satisfies the minimum federal requirements [this Court] ha[s] outlined." *Danforth*, 552 U.S. at 287 (quoting *Harper v. Virginia Dep't of Taxation*, 509 U.S. 86, 102 (1993), quoting in turn *McKesson Corp. v. Div. of Alcoholic Beverages and Tobacco, Dep't of Bus. Regulation*, 496 U.S. 18, 51-52 (1990)).

That there must be some federal minimum for the redressibility of constitutional violations in state criminal trials has long been recognized by this Court because "[w]hether a conviction for crime should stand when a State has failed to accord federal constitutionally guaranteed rights is every bit as much of a federal question as what particular federal constitutional provisions themselves mean, what they

guarantee, and whether they have been denied." *Chapman v. California*, 386 U.S. 18, 21 (1967). This Court has established that the Supremacy Clause does not allow States to deny remedies for federal rights "by the invocation of a contrary approach to retroactivity under state law." *Harper*, 509 U.S. at 100; *see also id.* at 102 ("State law may provide relief beyond the demands of federal due process, but under no circumstances may it confine petitioners to a lesser remedy." (internal citations omitted)); *Smith*, 496 U.S. at 178-79 (plurality opinion) ("[F]ederal law sets certain minimum requirements that States must meet but may exceed in providing appropriate relief.").

Consistent with this precedent, this Court has required state courts to apply its constitutional decisions retroactively to state criminal convictions in at least two situations. First, States are bound to apply new rules of constitutional law announced by this Court retroactively to all decisions on direct review. *See Griffith v. Kentucky*, 479 U.S. 314, 328 (1987). Second, even on collateral review, States are required to apply decisions of this Court that do not announce new rules. *See Yates v. Aiken*, 484 U.S. 211, 218 (1988).

Griffith held that "a new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases, ***state or federal***, pending on direct review or not yet final, with no exception." 479 U.S. at 328 (emphasis added). *Griffith* came to this Court on direct review of a state criminal conviction that had

been affirmed by the Kentucky Supreme Court. *Id.* at 318. By reversing, this Court required all state courts to apply *Batson v. Kentucky*, 476 U.S. 79 (1986), retroactively to all cases on direct review. *Griffith*, 479 U.S. at 328. It could not have done so if retroactivity with respect to state court proceedings was purely a question of state law.[19]

The following year, *Yates* specifically rejected the argument that "South Carolina ha[d] the authority to establish the scope of its own habeas corpus proceedings and to refuse to apply a new rule of federal constitutional law retroactively in such a proceeding." 484 U.S. at 217-18. This Court held that because the rule the South Carolina Supreme Court had refused to apply was not in fact new, the state court was bound to apply it. *Id.* at 218.

The difference between these cases establishing a constitutional floor for retroactivity, and *Danforth*, which held that States are not limited by *Teague*'s general non-retroactivity principle, is the source of this Court's authority to establish the rule. *Danforth* explained that the source of *Teague*'s limitation on the power of federal courts to grant relief in habeas proceedings is "this Court's power to interpret the

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[19] *Griffith* therefore overruled this Court's prior statement in *Linkletter v. Walker*, 381 U.S. 618 (1965), "that the Constitution neither prohibits nor requires retrospective effect," *id.* at 629, and the Anti-Jurisdiction Amicus Brief's reliance on *Linkletter* for this proposition is misplaced. (*See* Anti-Jurisdiction Amicus Br. 27.)

federal habeas statute" and "to adjust the scope of the writ in accordance with equitable and prudential considerations." 552 U.S. at 278. Because this ceiling on retroactive application was not drawn from any constitutional source that binds the States, *Teague* does not "constrain[ ] the authority of state courts to give ***broader*** effect to new rules of criminal procedure than is required by that opinion." *Danforth*, 552 U.S. at 266 (emphasis added); *id.* at 289-90.

Danforth did not address the inverse question of whether States are bound by *Teague*'s floor, and thus must apply a decision retroactively if it is substantive or a watershed rule of criminal procedure. The opinion explicitly left open the question of "whether States are required to apply 'watershed' rules in state post-conviction proceedings." *Id.* at 269 n.4.

Unlike the statutory bases for limiting retroactive application, the bases for requiring it are drawn from "basic norms of constitutional adjudication," originating in the Judicial Power and Due Process Clauses of the Constitution. *Griffith*, 479 U.S. at 322; *see also Teague*, 489 U.S. at 317 (White, J., concurring) (noting *Griffith* "appear[s] to have constitutional underpinnings."). *Griffith* cited this Court's Article III power to adjudicate cases and controversies, "the nature of judicial review," and "the principle of treating similarly situated defendants the same," as the basis for the Court's decision. 479 U.S. at 322-23; *see also Harper*, 509 U.S. at 95; *James B. Beam Distilling Co. v. Georgia*, 501 U.S. 529, 547 (1991) (Blackmun, J., concurring) (noting that *Griffith*'s rule "derives

from the integrity of judicial review" required by the Constitution's grant of authority to review cases and controversies). *Yates* confirms that, although the scope of these constitutional norms might vary between direct and collateral review, the fact that state courts are constitutionally obligated to follow those norms does not.[20] 484 U.S. at 217-18.

Teague's floor is similarly drawn from "components of basic due process." 489 U.S. at 313. Justice Harlan's original formulation of the *Teague* exceptions spoke in terms of violations of due process. *See Mackey v. United States*, 401 U.S. 667, 692-93 (1971) (Harlan, J., concurring in part and dissenting in part). His reference to the standard of *Palko v. Connecticut*, 302 U.S. 319 (1937), indicates that the requirement to apply substantive rules and those procedural rules "'implicit in the concept of ordered liberty'" is drawn from the minimum due process protections that bind the States through the Fourteenth Amendment. *Mackey*, 401 U.S. at 693-94 (quoting *Palko*, 302 U.S. at 325, *overruled on other grounds by Benton v. Maryland*, 395 U.S. 784 (1969));

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[20] The fact that a State is not required to provide a state postconviction remedy does not, as the Anti-Jurisdiction Amicus Brief suggests at 28-29, distinguish it from direct appeal for this purpose. "[A] State is not required by the Federal Constitution to provide appellate courts or a right to appellate review at all." *Griffin v. Illinois*, 351 U.S. 12, 18 (1956). But in both cases, once a State does, it must do so in a way that complies with the Due Process and Equal Protection Clauses of the Constitution. *Id.*; *see also Douglas v. California*, 372 U.S. 353, 355 (1963).

see also Palko, 302 U.S. at 325-27. Because the *Teague* exceptions set a constitutional minimum drawn from the federal judicial power and the Due Process Clause, States are bound to grant at least as much retroactivity as *Teague* provides. The Louisiana Supreme Court's refusal to apply *Miller* retroactively in this case presents a federal question as to whether Louisiana has done so, and, as we contend above, it has not.

Moreover, permitting state courts to provide less retroactivity than *Teague* requires would undermine, rather than promote, interests in comity and finality, thus turning *Teague* on its head. *See Teague*, 489 U.S. at 308 (emphasizing importance of "interests of comity and finality"). The federal courts remain bound by *Teague* and would eventually grant habeas relief to prisoners in States that failed to apply substantive and watershed decisions retroactively in their own state court postconviction proceedings. However, this Court's ability to review those state court decisions by way of certiorari from state postconviction proceedings can significantly limit the amount of time required to redress those substantive and watershed constitutional violations, thus bringing those cases to a conclusion much more quickly. By contrast, requiring petitioners from those states to proceed to federal court before the issue can be resolved would disserve both federal and state interests in the prompt resolution of postconviction challenges.

It is beyond dispute that this Court could grant certiorari in a federal habeas corpus case and instruct

lower federal courts to order state courts to apply retroactively a substantive or watershed constitutional decision. There is no greater intrusion on state power, and it seems to involve no less a federal question, for the Court directly to order state courts to do so by way of granting certiorari in a state postconviction case. And as just mentioned, the interests of finality are promoted by the Court resolving the issue earlier in the process.[21]

Finally, the federal requirement that States provide a minimum level of retroactivity promotes the federal constitutional interest in treating similarly situated defendants the same. *See Teague*, 489 U.S. at 315 ("[T]he harm caused by the failure to treat similarly situated defendants alike cannot be exaggerated: such inequitable treatment hardly comports with the ideal of administration of justice with an even hand." (internal quotation marks omitted)). Although at times in our federal system, this interest must yield to the diversity of state laws, *Danforth*, 542 U.S. at 290, the Federal Constitution also requires that

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[21] Moreover, while the Anti-Jurisdiction Amicus Brief at 30-31 places substantial reliance on the availability of federal habeas review, the ability of state prisoners to access that review is not necessarily so simple. If there is no constitutional minimum requirement for retroactivity, then, of course, Congress could also limit or eliminate access to federal habeas for prisoners seeking retroactive application of new substantive rules. Indeed, Congress has already imposed substantial limits on federal habeas, and these limitations could potentially deny federal review to juvenile offenders seeking relief under *Miller*. *See, e.g.*, *Dodd v. United States*, 545 U.S. 353, 359 (2005).

certain minimum constitutional guarantees be available to prisoners in every State. "With faithfulness to the constitutional union of the States, [this Court] cannot leave [entirely] to the States the formulation of the authoritative laws, rules, and remedies designed to protect people from infractions by the States of federally guaranteed rights." *Chapman*, 386 U.S. at 21. Because federal law sets a minimum floor for retroactive application of this Court's constitutional decisions, this Court must ensure that a minimum level of relief is available to all prisoners impacted by a new rule.

CONCLUSION

For the foregoing reasons, *amici* respectfully request that this Court hold that all state courts must apply *Miller* retroactively to cases on collateral review.

Respectfully submitted,

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